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In re Application of	:	
GRIFFNER	:	DECISION ON RENEWED
U.S. Application No.: 10/534,467	:	
PCT No.: PCT/AT03/00314	:	PETITION UNDER
Int. Filing Date: 16 October 2003	:	
Priority Date: 11 November 2002	:	37 CFR 1.181
Attorney Docket No.:4301-1138	:	
For: BUILDING MADE OF WALL HALLOW	:	
HEATED ELEMENTS	:	

This decision is in response to applicant's "Renewed Request For Reconsideration Under 37 CFR 1.181" filed 23 March 2006 in the United States Patent and Trademark Office (USPTO).

### **BACKGROUND**

On 13 March 2006, applicant was mailed a communication dismissing applicant's arguments in response to a "Notification of Defective Response" (Form PCT/DO/EO/916) mailed 23 January 2006. Applicant was informed that the response period identified in the "Notification of Missing Requirements" (Form PCT/DO/EO/905) mailed 24 October 2005 remained in effect.

On 23 March 2006, applicant filed the present renewed petition under 37 CFR 1.181.

### **DISCUSSION**

None of the facts in the present action are in dispute. The application is a U.S. National stage entry of international application PCT/AT03/00314. As detailed in the communication mailed 13 March 2006, on 22 December 2005 applicant filed a combined declaration and power of attorney executed by the sole inventor, Ari Griffner. The international application number on the filed declaration was identified as PCT/AT2003/000315.

Applicant contends that, while the declaration identifies the wrong international application, the declaration complies with 37 CFR 1.63. Applicant cites an Official Gazette Notice (O.G. notice) of 15 August 1995 which was subsequently incorporated into Section 602 of the Manual of Patent Examining Procedure (MPEP). Applicant's contention is unfounded and the reliance on Section 602 of the MPEP is misplaced.

Section 602 VI Identification of Application states:

37 CFR 1.63 requires that an oath or declaration identify the specification to which it is directed. The declaration form suggested by the Office includes spaces for filling in the names of the inventors, title of the invention, application number, filing date, and foreign priority application information. While this information should be provided, it is not essential that **all of these spaces be completed** in order to adequately identify the specification in compliance with 37 CFR 1.63(b). (boldness added).

It is clear from the language above that the alternatives which follow (those relied upon by applicant in the present action) are avenues of relief for instances in which all of the spaces (names of the inventors, title of the invention, application number, filing date, and foreign priority application information) are not filled out. In the present case, all of this information was in fact provided on the declaration filed 22 December 2005. Thus, Section 602 does not apply.

Further, the information provided was in conflict with itself. Specifically, the international application number did not match the inventor name, title, filing date and foreign priority information. Thus, as stated in the Form PCT/DO/EO/916 mailed 23 January 2006, the filed declaration did not comply with 37 CFR 1.497(a)-(b).

Applicant asserts that a "Senior Legal Advisor of the Office of Petitions" informed counsel that a declaration such as the one filed by applicant must be accepted. The offered information has no bearing on the case at hand. Decisions rendered by the Office of PCT Legal Administration are made based on the record of the case. Applicant is reminded that 37 CFR 1.2 states that the action of the USPTO will be based exclusively on the written record in the office and that no attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. (See also Farnum v. Manbeck (DC DC) 21 USPQ2d 1691 (1991))

CONCLUSION

Applicant's renewed petition under 37 CFR 1.181 is **DENIED**.

Applicant is again advised that a compliant oath or declaration of the inventor in response to the Form PCT/DO/EO/905 mailed 24 October 2005 has not been filed and the extendable time period for responding continued to run. Failure to timely provide a compliant oath or declaration of the inventor will result in the application being abandoned as to the National stage in the United States.



Charles Pearson

Director

Office of PCT Legal Administration